



Committee On Finance

Max Baucus, Ranking Member

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STATEMENT OF SENATOR MAX BAUCUS REGARDING THE NOMINATION OF GLEN BOWER TO THE UNITED STATES TAX COURT

Mr. Chairman, before you proceed with a vote on the nomination of Mr. Glen Bower, I would like to make a statement.

The United States Tax Court plays an indispensable role in preserving our voluntary self-assessment tax system. It provides a judicial forum in which taxpayers can dispute tax deficiencies determined by the Internal Revenue Service (IRS) prior to payment of the disputed amounts. It is a court of national jurisdiction and its decisions on tax matters are important to us all.

The Tax Court is a highly specialized court. It is composed of 19 presidential-appointed members. All of the judges have expertise in the tax laws. They apply that expertise in a manner to ensure that taxpayers are assessed only what they owe, and no more. The Tax Court also has responsibilities beyond hearing disputes concerning tax deficiencies.

The Court has authority to hear tax disputes over notices of transferee liability, certain types of declaratory judgment, readjustments of partnership items, failures to abate interest, awards of administrative costs, worker classification, innocent spouse relief, and certain collection actions. These matters are highly technical. They demand the consideration of a skilled and knowledgeable judge.

Tax Court judges protect taxpayers' rights and they ensure that everyone pays their fair share. They are expected to know the law, apply it in a fair and equitable manner, and personally adhere to its requirements. Although judges are appointed to 15-year terms, the reality is these are life-time appointments. It has been tradition that judges who perform well have been reappointed, regardless of political affiliation. Therefore, it is critical that only those with the highest degree of integrity, knowledge and experience are appointed to the bench.

The Finance Committee has a good track record in approving qualified judges to the Tax Court. We have to ensure that judges have the requisite tax law expertise – and judicial temperament – to discharge the significant responsibilities of the court.

Recently, the Finance Committee unanimously approved five new members to the bench. The credentials of each new judge met or exceeded the standards traditionally followed by this Committee. They are of the highest caliber. Not one question was raised about their qualifications or ability to serve. Not one question was raised about their personal tax returns. They each received a "very qualified" rating from the American Bar Association Tax Section.

In contrast, with regard to Mr. Bower, the Committee's due diligence process revealed serious questions about deductions he took on his personal tax returns. In my judgment, this in turn raises questions about his knowledge of the tax laws – his knowledge of the most basic tax laws – and his suitability to be a competent U.S. Tax Court judge.

Mr. Chairman, you and I issued a statement this morning providing details on the type of improper deductions taken by Mr. Bower. I suspect many will think that Mr. Bower should be more forthcoming about the nature of those deductions and why he thought they were appropriate.

Before we vote, maybe the court of public opinion should be heard. I urge Members of this Committee to carefully consider whether Mr. Bower belongs on the court. I can't recall a time when we didn't approve a Tax Court judge on a unanimous vote. It is troubling that we might do so today.

Mr. Bower was given a fair opportunity to clean up his tax returns. After repeated attempts to get it right he came up short – woefully short. Many of the issues involve basic tax law that Mr. Bower either fails to understand or simply ignores. The tax code is admittedly complex. But it is written in English and many sections have plain meaning, including those that he failed to comply with.

The question is no longer about the amount of tax involved, or the nominee's willingness to take remedial action. The question is about Mr. Bower's duty and responsibility to ensure that he is complying with the tax laws – tax laws that he will be empowered to enforce.

Mr. Chairman, this committee expects a higher degree of competency regarding the tax laws than that demonstrated by Mr. Bower. Our voluntary tax system is at a cross roads. There are too many stories about corporate shelters, offshore financial accounts, various tax scams and schemes. IRS compliance is way down.

Our investigation of Enron clearly revealed the complexity of our tax laws and the arrogant abuse of that complexity. Many taxpayers question whether they are the only ones paying taxes. American taxpayers need to know that the Tax Court judge who sits in judgment of them is himself compliant with the tax laws. Mr. Bower's conduct evidences a belief that the American taxpayer should reimburse him for his personal expenses. He is wrong.

After carefully reviewing this matter and weighing all factors regarding this nomination, I have concluded that he should not be approved by this Committee nor confirmed by the Senate. It is not my intent nor desire to disparage the reputation of Mr. Bower. He may have served well in other capacities, but he does not belong on the Tax Court. As you know, I have shared my views with Chairman Grassley and the White House.

This committee has approved approximately four dozen of the President's nominees. We have not formally rejected a single one. My decision to oppose this nominee reflects how strongly I feel about protecting the integrity of our tax system. The integrity of our tax system is only as strong as the character and honesty of those who oversee it.

Mr. Chairman, I do not support the nomination of Mr. Bower to be a United States Tax Court judge. I know the Chairman wishes to proceed with a vote on this nomination. And I want to accommodate my Chairman. But, we only disclosed this information to the Members of the Committee last night. Fairness dictates that we give Senators time to digest the information and ask questions of Mr. Bower before being asked to vote. I, therefore, request that we put off the vote on Mr. Bower.

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